

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Shawn Simmons, a/k/a Bashawn R. Simmons,)	
)	C/A No. 0:09-1171-MBS
)	
Plaintiff,)	
)	
vs.)	
)	
)	O R D E R
Luis Berrios, M.D., Clinical Director)	
FCI-Bennettsville; Ms. Jump, Nurse)	
Practitioner FCI-Bennettsville,)	
)	
Defendants.)	
_____)	

At the time of the underlying events, Plaintiff Shawn Simmons was an inmate in custody of the Bureau of Prisons, housed at FCI-Bennettsville in Bennettsville, South Carolina. Plaintiff contends that he was denied appropriate medical care in violation of his constitutional rights. See Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 397 (1971).

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. § 1915 and the Prison Litigation Reform Act. On August 17, 2009, the Magistrate Judge issued a Report and Recommendation in which she recommended that the case be summarily dismissed for failure to state a claim upon which relief may be granted. (Entry 22) Plaintiff was advised of his right to file objections to the Report and Recommendation. Id. However, rather than filing objections, on August 31, 2009 Plaintiff filed an appeal to the Court of Appeals for the Fourth Circuit. (Entry 24) On December 4, 2009, the Fourth Circuit issued an unpublished opinion in which it noted that the Report and Recommendation is neither a final order nor an appealable interlocutory or collateral order. Accordingly, the appeal

was dismissed for lack of jurisdiction. (Entries 29, 30)

On January 13, 2010, the court issued an order noting that Plaintiff had never responded directly to the Report and granting Plaintiff until January 26, 2010 to file objections to the Magistrate Judge's recommendation that the within action be summarily dismissed, should he desire to do so. Plaintiff has not responded to the court's January 13, 2010 order.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report of Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has carefully reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. The complaint is dismissed without prejudice and without issuance of service of process.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

February 2, 2010.